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SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

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OF COUNSEL  
URBAN A LESTER

February 22, 2012

Ms. Cynthia T. Brown  
Chief of the Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 "E" Street, S.W.  
Washington, D.C. 20423

Dear Ms Brown:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Security Agreement, dated as of February 21, 2012, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Secured Party: Federal Railroad Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Debtor: The Kansas City Southern Railway Company  
427 West 12<sup>th</sup> Street  
Kansas City, Missouri 64105

A description of the railroad equipment covered by the enclosed document is:

30 GE ES44AC locomotives: KCS 4765 – KCS 4789 and KCSM 4760 – KCSM 4764.


A short summary of the document to appear in the index is:

Security Agreement.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

  
✓ Edward M. Luria

EML/sem  
Enclosures

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**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT is dated as of February 21, 2012 (the "Agreement"), and made by and among THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of Missouri ("Debtor") and the UNITED STATES OF AMERICA, REPRESENTED BY THE SECRETARY OF TRANSPORTATION ACTING THROUGH THE ADMINISTRATOR OF THE FEDERAL RAILROAD ADMINISTRATION (the "Administrator").

WHEREAS, Debtor and the Administrator have entered into a Financing Agreement of even date herewith (as it may hereafter be amended, supplemented or otherwise modified from time to time, being the "Financing Agreement"). Capitalized terms used but not defined herein shall have the meaning set forth in the Financing Agreement.

WHEREAS, pursuant to the Purchase Agreement, Debtor is acquiring from the Manufacturer the locomotives described in Schedule I hereto (the "Units").

WHEREAS, pursuant to the Financing Agreement, Debtor is financing a portion of the purchase price of the Units.

WHEREAS, Debtor will lease five (5) of the Units to KCSM pursuant to the KCSM Lease and permit the use in Mexico of the other twenty-five (25) Units pursuant to the KCSM Run-Through Agreement.

WHEREAS, it is a condition precedent to the making of advances under the Financing Agreement (i) that Debtor grant to the Administrator a first priority purchase money security interest in the Units and other Collateral (as hereinafter defined) and (ii) that KCSM shall subordinate all of its rights and interest under the KCSM Documents to the Lien of the Administrator under the Collateral Documents and shall grant to the Administrator a first priority security interest in all KCSM's interest in the Units pursuant to the KCSM Documents or otherwise.

NOW, THEREFORE, in consideration of the premises and in order to induce the Administrator to make advances under the Financing Agreement, Debtor hereby agrees with the Administrator as follows:

**Section 1.     Grant of Security by Debtor.**

(a) As collateral security for the Indebtedness, Debtor hereby pledges and grants to the Administrator a first priority purchase money security interest in Debtor's right, title and interest in and to the following, in each case, as to each type of property described below, whether now owned or hereafter acquired by Debtor, wherever located, and whether now or hereafter existing or arising (collectively, the "Collateral"):

(a) The Units;

(b) All books and records, including maintenance logs, relating to each Unit;

- (c) All manufacturer warranties under the Purchase Agreement relating to such locomotives,
- (d) The KCSM Lease, including all rights of Borrower thereunder to receive rent and to exercise right of termination and remedies thereunder and all rights of KCSM into and the Units subject thereto,
- (e) The KCSM Run-Through Agreement, to the extent that any Unit is subject thereto, and
- (f) All products, replacement and proceeds of the foregoing.

(b) Debtor acknowledges and agrees that (i) the Lien of the Administrator created hereunder in each Unit shall attach and be perfected prior to the KCSM Documents becoming effective with respect to any Unit, or any right of Debtor or KCSM being created thereunder in respect of any Unit, (ii) the KCSM Documents shall at all times be inferior to and subject to the Lien of the Administrator hereunder, and (iii) the only Units that will be subject to the KCSM Lease are those five (5) identified on Schedule 1 hereto bearing KCSM reporting marks. Debtor agrees that neither the KCSM Lease nor the KCSM Run-Through Agreement will be filed with the STB.

## Section 2. Security for Indebtedness.

This Agreement secures the due and punctual payment and performance by Debtor of all of its payment and performance obligations under the Loan Documents to which it is a party, now existing or hereafter arising, including the payment by Borrower of the Loan, and each obligation of KCSM under the Lien Subordination, now existing or hereafter arising, in each case whether such obligations are direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise (collectively, the "Indebtedness").

## Section 3. Debtor Remain Liable.

Anything herein to the contrary notwithstanding, (a) Debtor shall remain liable under each Loan Document to which it is a party to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrator of any of the rights hereunder shall not release Debtor from any of the Indebtedness, (c) by reason of this Agreement, the Administrator shall not be liable to take any action to collect or enforce any claim for payment assigned hereunder and (d) the Administrator shall have no obligations of any kind under the KCSM Documents, it being agreed the rights and obligations of Debtor and KCSM thereunder shall run solely between each other.

## Section 4. Representations and Warranties.

Debtor represents and warrants as follows:

- (a) Debtor is a Class I railroad as defined in 49 CFR Part 12011-1. The "location" (as such term is used in Section 9-307 of the Uniform Commercial Code) of

Debtor is the State of Missouri, and the place where its records concerning the Units and all of its interests in, to and under all documents relating to the Units are and will be kept, is located at Kansas City, Missouri. The true legal name of Debtor is "The Kansas City Southern Railway Company" as registered in the jurisdiction of its organization, its federal employer identification number is 44-6000758 and its charter number designated by its jurisdiction of organization is R00000513.

- (b) Debtor is the legal and beneficial owner of the Collateral free and clear of any lien, security interest, claim, option or right of others, except for any Permitted Lien. KCSM has no interest in the Collateral except as may be created pursuant to the KCSM Documents.
- (c) No effective financing statement or other instrument similar in effect covering all or any part of such Collateral or listing Debtor or any trade name of either Debtor, as debtor, is on file in any recording office, except such as may have been filed in favor of the Administrator or as otherwise permitted under the Financing Agreement.
- (d) All filings and other actions necessary to perfect the first priority purchase money security interest in the Collateral created under this Agreement have been duly made or taken and are in full force and effect, and this Agreement creates in favor of the Administrator a valid and, together with such filings and other actions, perfected first priority purchase money security interest in the Collateral, securing the payment of the Indebtedness.
- (e) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for (i) the grant by Debtor of the security interest granted hereunder or for the execution, delivery or performance of this Agreement by Debtor, or (ii) the perfection or maintenance of the security interest created hereunder (including the first priority nature of such security interest), except for the filing of financing and continuation statements under the UCC, which financing statements and lien filings have been duly made and are in full force and effect.

**Section 5.     Further Assurances.**

- (a) Debtor agrees that from time to time, at Debtor's expense, Debtor will promptly execute and deliver, or otherwise authenticate, all further instruments and documents, and take all further action that may be necessary or desirable, or that the Administrator may request, in order to perfect and protect any security interest granted or purported to be granted by Debtor hereunder or to enable the Administrator to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Debtor will promptly, with respect to Collateral: (i) prepare and file continuation statements with respect to any financing statements filed in respect of the Collateral, (ii) prepare, execute, authenticate and file or deliver such financing or

continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Administrator may request, in order to perfect and preserve the Lien of the Administrator created hereunder; (iii) authorize the Administrator to file in the appropriate jurisdiction any such financing or continuation statements, amendments thereto or other instruments or notices and (iv) deliver to the Administrator copies of all such statement, notices or filings and evidence that all other action that the Administrator may deem reasonably necessary or desirable in order to perfect and protect the Lien of the Administrator under this Agreement has been taken.

- (b) Debtor will furnish to the Administrator from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with such Collateral as the Administrator may reasonably request, all in reasonable detail.

#### Section 6. Administrator Appointed Attorney in Fact.

Debtor hereby irrevocably appoints the Administrator as Debtor's attorney in fact, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time to time upon the occurrence and during the continuance of an Event of Default, in the Administrator's discretion, to take any action and to execute any instrument that the Administrator may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation: (i) to obtain and adjust insurance claims, (ii) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral, (iii) to receive, indorse and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) or (ii) above, and (iv) to file any claims or take any action or institute any proceedings that the Administrator may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the rights of the Administrator with respect to any of the Collateral.

#### Section 7. Administrator May Perform.

If Debtor fails to perform any agreement contained herein, the Administrator may, but without any obligation to do so and without notice, itself perform, or cause performance of, such agreement, and the expenses of the Administrator incurred in connection therewith shall be payable by Debtor.

#### Section 8. The Administrator's Duties.

- (a) The powers conferred on the Administrator hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrator shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not Administrator has or is deemed to have

knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Administrator shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

- (b) Anything contained herein to the contrary notwithstanding, the Administrator may from time to time, when the Administrator deems it to be necessary, appoint one or more subagents (each a "Subagent") for the Administrator hereunder with respect to all or any part of the Collateral. In the event that the Administrator so appoints any Subagent with respect to any Collateral, (i) the assignment of such Collateral and the security interest granted in such Collateral hereunder shall be deemed for purposes of this Security Agreement to have been made to such Subagent, in addition to the Administrator, as security for the Indebtedness, (ii) such Subagent shall automatically be vested, in addition to the Administrator, with all rights, powers, privileges, interests and remedies of the Administrator hereunder with respect to such Collateral, and (iii) the term "Administrator," when used herein in relation to any rights, powers, privileges, interests and remedies of the Administrator with respect to such Collateral, shall include such Subagent; provided, however, that no such Subagent shall be authorized to take any action with respect to any such Collateral unless and except to the extent expressly authorized in writing by the Administrator.

#### Section 9. Default.

The occurrence of an Event of Default under the Financing Agreement shall constitute a default hereunder. Any notices provided under the Financing Agreement shall also serve as notices under this Security Agreement.

#### Section 10. Remedies.

- (a) Upon the occurrence of a default hereunder, or at any time thereafter, the Administrator may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it under applicable law, all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral) and also may:
- i. without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administrator's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Administrator may deem commercially reasonable;
  - ii. occupy any premises owned, leased or controlled by Debtor where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to Debtor in respect of such occupation;

- iii. terminate the KCSM Documents and extinguish all rights of KCSM thereunder or in and to any Unit subject thereto;
  - iv. at the Administrator's request and Debtor's sole expense, direct the Debtor to return all Units to a location in the United States specified by the Administrator; and
  - v. exercise any and all rights and remedies of Debtor under or in connection with the Collateral, or otherwise in respect of the Collateral, including, without limitation, (A) any and all rights to demand or otherwise require payment of any amount under, or performance of any provision of the KCSM Documents, and (B) exercise all other rights and remedies with respect to the Collateral, including, without limitation, those set forth in Section 9-607 of the UCC. Debtor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrator shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrator may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.
- (b) At any time during which the Administrator is exercising its rights and remedies in respect of the Collateral, any cash held by or on behalf of the Administrator and all cash proceeds received by or on behalf of the Administrator in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Administrator, be held by the Administrator as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Administrator pursuant hereto) in whole or in part by the Administrator against, all or any part of the Indebtedness. Any surplus of such cash or cash proceeds held by or on behalf of the Administrator and remaining after payment in full of all the Indebtedness shall be paid over to Debtor or to whomsoever may be lawfully entitled to receive such surplus.
- (c) All payments received by Debtor under or in connection with any Collateral shall be received in trust for the benefit of the Administrator, shall be segregated from other funds of Debtor and, upon the occurrence and continuation of any Event of Default, shall be forthwith paid over to the Administrator in the same form as so received (with any necessary endorsement).
- (d) The Administrator may, without notice to Debtor except as required by law and at any time or from time to time, charge, set off and otherwise apply all or any part of the Indebtedness against any funds held with respect to the Collateral or in any other deposit account.

Section 11. Indemnity and Expenses.



- (a) Debtor agrees to indemnify, defend and save and hold harmless Administrator and each of its Affiliates and their respective officers, directors, employees, agents and advisors (each, an "Indemnified Party") from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or resulting from this Agreement (including, without limitation, enforcement of this Agreement), except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of, or breach of any contractual obligation to Debtor, KCS or KCSM by, such Indemnified Party (any Affiliate of such party or entity or any of their respective directors, officers, employees or agents).
- (b) Debtor will upon demand pay to the Administrator the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and expenses of its counsel and of any experts and agents, that the Administrator may incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of the Administrator hereunder or (iv) the failure by Debtor to perform or observe any of the provisions hereof.

Section 12. Amendments; Waivers.

No amendment or waiver of any provision of this Agreement, and no consent to any departure by Debtor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrator, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Administrator to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

Section 13. Notices.

All notices and other communications provided for hereunder shall be given in accordance with the Financing Agreement.

Section 14. Continuing Security Interest; Assignments under the Financing Agreement.

This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until the payment and satisfaction in full of the Indebtedness (other than contingent obligations with respect to indemnities for which a claim has not been made), (b) be binding upon Debtor, its successors and assigns and (c) inure, together with the rights and remedies of the Administrator hereunder, to the benefit of the Administrator and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (c),

the Administrator may, in accordance with Section 2.6(b) of the Financing Agreement, assign or otherwise transfer all or any portion of the Administrator's rights and obligations under the Financing Agreement (including, without limitation, all or any portion of its commitment, the advances owing to it and the Note or Notes, if any, held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Administrator herein or otherwise.

Section 15. Execution in Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be effective as delivery of an original executed counterpart of this Agreement.

Section 16. Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 17. Partial Release of Collateral.

It is the understanding of Debtor and the Administrator that the Lien of the Administrator is subject to release, in part, upon prepayment of the Loan as provided in Section 2.5 of the Financing Agreement.

IN WITNESS WHEREOF, Borrower has caused this Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

**BORROWER:**

**THE KANSAS CITY SOUTHERN RAILWAY  
COMPANY**

By: Michael W. Cline

Name: Michael W. Cline  
VP-Finance + Treasurer

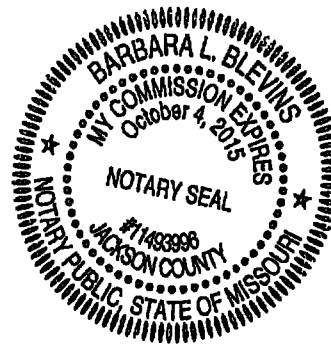
STATE OF Missouri )  
 ) ss:  
COUNTY OF Jackson )

On this 13th day of January, 2012, before me personally appeared Michael W. Cline to me personally known, who being by me duly sworn, says that he is the VP-Finance & Treasurer of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that as such officer, being authorized to do so by authority of its Board of Directors, he/she executed the foregoing instrument of said corporation.

By Barbara L. Blevins  
Notary Public

(SEAL)


My Commission Expires: 10-4-2015



IN WITNESS WHEREOF, Borrower has caused this Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

**ADMINISTRATOR:**

**FEDERAL RAILROAD ADMINISTRATOR**


By:   
Name: Joseph C. Szabo  
Title: Administrator

DISTRICT OF )

COLUMBIA )

ss

On this 21<sup>st</sup> day of February 2012, before me personally appeared Joseph C. Szabo residing at 1200 New Jersey Avenue, SE, Washington, DC 20590 to me personally known, who being by me duly sworn says that he/she is the Administrator of the FEDERAL RAILROAD ADMINISTRATION, and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

  
Notary Public

My Commission Expires: 6/14/2014

SEAL

**DESCRIPTION OF LOCOMOTIVES**

Thirty (30) General Electric ES44AC Locomotives

<b>Description</b>	<b>Manufacturer Serial Numbers</b>	<b>Debtor Reporting Marks</b>
KCS	60624	4765
KCS	60625	4766
KCS	60626	4767
KCS	60627	4768
KCS	60628	4769
KCS	60629	4770
KCS	60630	4771
KCS	60631	4772
KCS	60632	4773
KCS	60633	4774
KCS	60634	4775
KCS	60635	4776
KCS	60636	4777
KCS	60637	4778
KCS	60638	4779
KCS	60639	4780
KCS	60640	4781
KCS	60641	4782
KCS	60642	4783
KCS	60643	4784
KCS	60644	4785
KCS	60645	4786
KCS	60646	4787
KCS	60647	4788
KCS	60648	4789
KCSM	60649	4760
KCSM	60650	4761
KCSM	60651	4762
KCSM	60652	4763
KCSM	60653	4764

CERTIFICATION

I, Edward M. Luria, an attorney licensed to practice in the District of Columbia, the State of Delaware and the Commonwealth of Pennsylvania, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document

Dated. 2/22/12

Edward M. Luria  
Edward M. Luria